

1 IN THE UNITED DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

3 DAVID BIEBEL, Plaintiff : ERIE DIVISION
4 VS : CIVIL ACTION NO. 05-10
5 KOHL'S DEPARTMENT STORE, Defendant

CERTIFIED TRANSCRIPT

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16 APPEARANCES:
17 CYNTHIA L. O'DONNELL, ESQUIRE, Tighe, Evan, Schenck &
18 Paras, Four Gateway Center, 444 Liberty Avenue, Suite
19 1300, Pittsburgh, Pennsylvania 15222. Attorney for
Defendant, Kohl's Department Store.

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21 Street, Erie, Pennsylvania 16501. Attorney for
Plaintiff, Davie Biebel.

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1 verbal?

2 THE DEPONENT: Okay.

3

4 DIRECT EXAMINATION

5 BY MR. BARRON:

6 Q. Would you state your name for the record.
7 please?

8 A. Judith Himes.

9 Q. Where do you reside?

10 A. 660 Young Road, Apartment 11, Erie, Pennsylvania
11 16509.

12 Q. And how long have you resided there?

13 A. I believe, four years.

14 Q. Are you married?

15 A. Yes.

16 Q. How long have you been married?

17 A. 25 years, just celebrated it

18 Q. How long have you worked at Kohl's Department
19 Store?

20 A. 10 years in September

21 Q. And, presently, what is your job title?

22 A. Replenish work I replenish

23 Q. Could you just tell us what that job entails?

24 A. I replenish the shoes. I do fill in the shoe
25 department

1 me.

2 Q. How did you find out Mr. Biebel had fallen?

3 A. He hollered help and I was in the next aisle.

4 Q. What aisle were you in --

5 A. Right --

6 Q. Well let me finish this. Were you in the shoe
7 department?

8 A. Yes. The next aisle, in the shoe department
9 from him.

10 Q. I'm going to show you three photographs
11 previously marked Biebel's Deposition Exhibit 1, 2 & 3.
12 Mrs. Himes, first of all, can you identify the area that's
13 depicted in these pictures?

14 A. Yes.

15 Q. What area is that?

16 A. We have one wide aisle in the shoe department
17 and that's exactly where it happened.

18 Q. This is the aisle, this is the shoe aisle in
19 Deposition Exhibit No. 2, that's the shoe aisle?

20 A. They're all the shoe aisle.

21 Q. It's the same picture from different angles?

22 A. Because there's two sections from the aisle.
23 The first section and a space and this section he fell in.
24 I guess here (indicating), you can see it.

25 Q. Let's mark on Deposition Exhibit 1 --

1 A. But that (indicating) shouldn't be there.

2 Q. We'll get to that in a second. To your
3 knowledge, mark an X on Deposition Exhibit 1 where you
4 believe Mr. Biebel fell?

5 A. (Complied). I'm just going in the shaded
6 because it's in front of there.

7 Q. You believe he fell there?

8 A. Yes.

9 Q. Where were you when he fell?

10 A. He's here (indicating).

11 Q. Here doesn't translate to well into the record.
12 So, we know for the record, Biebel Deposition Exhibit 2,
13 place an X where you were at?

14 A. Oh, yeah, in this aisle.

15 Q. You weren't in that aisle?

16 A. No.

17 Q. In Deposition Exhibit 2, can you tell where Mr.
18 Biebel was?

19 A. Yes.

20 Q. Place an X there?

21 A. (Complied).

22 Q. In Deposition Exhibit 3 place an X where you
23 believe Mr. Biebel was?

24 A. I'm assuming this is the same and I want to say
25 he was long.

1 Q. You're saying this is, basically, where he fell.
2 Is that correct?

3 A. Yeah.

4 Q. And where were you in relationship, say, to
5 Deposition Exhibit 1, is that an aisleway in between there?

6 A. Yes. And I was on the other side of this
7 fixture, which is another aisle right up there so I was like
8 across.

9 Q. For the record, make an arrow pointing which way
10 you were at, where you were at?

11 A. (Complied).

12 Q. You were down an aisle that way and you placed
13 an arrow on Deposition Exhibit 1. Is that correct?

14 A. Right. Do you want me to put another arrow this
15 way (indicating). I was right across from him.

16 Q. In the other aisle?

17 A. Yes.

18 Q. And what were you doing in that aisle?

19 A. Filling shoes in.

20 Q. Are there's shoes on the other side where you
21 placed your arrow on Deposition Exhibit No. 1, another aisle
22 of shoes?

23 A. Yes.

24 Q. Now, what happened, you heard Mr. Bible?

25 A. I heard, help, help. And I went to look and

1 there he was just in the other aisle and I went right down
2 to him. He was right on the floor and I knelt right down to
3 him and I asked, are you okay, can you get up. And he
4 started he said, no, I can't. I had my knee operated on. I
5 can't step down. I said, just lay here. And then I called
6 my manager.

7 Q. Did you see anything that Mr. Biebel could have
8 fell on?

9 A. At the time, no.

10 Q. Did you at a subsequent time see something he
11 could have fell on?

12 A. When I came back the sizer was there so somebody
13 had said that he had tripped -- or I'm trying to remember if
14 he said that. He did.

15 Q. Did you ask him how he fell?

16 A. No, I didn't. He did have a cane and told me
17 that he just had his knee operated on.

18 Q. So after he fell he couldn't get up. You did,
19 what next, you went somewhere?

20 A. In the stockroom there's a phone.

21 Q. And you got on the phone and who did you call?

22 A. The manager.

23 Q. Dean?

24 A. Dean Taylor.

25 Q. And where did you get ahold of him? What